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ABSTRACT

Various aspects of the role of the state in fostering creative art and cinematography are discussed in the two reports presented in this volume. In "The Role of the Market in the Relation Between the State and Cinematographic Creation" Jean Lescure emphasizes that this relationship should be viewed as one of complicity rather than assistance or management. Subtopics briefly discussed include the state's interest in creation, France's special place in the cinema, the need for animation as a form of cultural development, the Art Cinema Movement in the world, the importance of the cinema theatre, the artist as a minority figure, theatres as special places, and the internationalism of the art cinema market. In the second paper, "Aid and Production," Claude Degand reviews sources of aid and how it is awarded, focusing on the problems related to the fostering of art and creativity in the cinema, while at the same time ensuring commercial viability. Topics include who receives aid, procedures and amounts awarded, policy and treaty problems encountered by the Council of Europe and the European Economic Community, economic and commercial restraints, and cooperation and European structures. Appended tables provide statistics on sources of aid to cinema and film production, the market share of films from various countries, the number of films released, and characteristics and possible correlations among film industries in Europe and the American film industry. (LMM)

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CREATIVE ART AND CINEMATOGRAPHIC PRODUCTION VIS-À-VIS THE STATE IN EUROPE

Jean Lescure

Claude Dégand

International colloquy
organised by the European Art and Experimental Cinema Association
in collaboration with the Council of Europe

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The "Studies Series", complementary publications to the bulletin *Cultural Policy*, includes papers on a topic already dealt with in a "dossier" of the bulletin and/or interesting monographs on national cultural case studies.

The two studies published in this booklet were presented to the Colloquy on "Creative art and cinematographic production vis-à-vis the State in Europe" which was held in Strasbourg under the auspices of the Council of Europe on 2 October 1981.

THE ROLE OF THE MARKET IN THE RELATION BETWEEN THE STATE AND CINEMATOGRAPHIC CREATION

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Centre national de la cinématographie (Paris)

INTRODUCTION

It is not willingly or even without some distaste that a true creator sees himself obliged to ask the state for assistance in carrying out his work. When, twenty years ago, I asked painters the question, "What do you expect from the state?", the reply was always, "That it should leave me alone to get on with my work". These were painters like Braque, Miró, Ubac and Gischia.

It is understandable that the state, for its part, is not without misgivings when it is approached by people wanting help but unable to adduce any proof of their irreplaceable genius. Like many others, I have memoranda from civil servants in the archives advising against a favourable reply to requests for aid from such poets as Saint-Pol Roux or Max Jacob. That was fifty years ago. Their kind of poetry was not read in offices.

But if painters want to get their work off the easel and on to the wall, they will become aware of the fact that the state can commission paintings. And if poets want something they write to be widely read, or if they fancy a "go" at a screen-play, they will overcome their repugnance.

In the light of the cost of some works, the rise of the "culture industry", and the political importance all countries give to art nowadays, we should look at the relationship between the state and artistic creation not as one of assistance or management but as one of complicity: the creator, say, needs the state in order to undertake a large-scale piece of work, or the state may want to encourage artists to venture into the monumental.

The first time I spoke to André Malraux about the international art cinema movement, his first comment was that he was not interested in what he felt to be a commercial trade-union activity, and he began talking to me about Eisenstein and Renoir, and ended by saying, "What I am interested in is creation".

STATES' INTEREST IN CREATION

However, he did not know how to give more life to that creation. He did not feel that grants were always an efficient method, or that a state body such as the UGC (Union Générale Cinematographique) then was could convince him of the state's ability to instigate a great period of creative activity. He was as distrustful of state *dirigisme* as he was of the temptation for artists to become civil servants. Before all else, he felt, the freedom of creative activity must be safeguarded.

If the products of artistic creation have become the object of renewed attention by states and a subject for political consideration in recent decades, it is in part because they are material assets, sources of enrichment for the countries which produce them; it is also because, by being part of the dialogue of ideas through which history evolves, they ensure a place for the countries engendering them in the formation of the values which mankind expects them to give to the future of civilisation. It is also, thus, because these works of art are traces of the times in which we live.

This new interest — or rather, if we remember the great patrons of old — renewed interest of states in artistic creation is not without its difficulties and conflicts. In some countries, an artist would never dream of asking the authorities to finance his efforts. In others, the authorities find it hard to accept that an artist might create something without their knowledge or without their consent. Between the two extremes, in cases where the state is frequently being asked to become involved by the artists themselves, there are no examples of it doing so without being promptly criticised, resisted and denounced as engaging in political machinations and seeking to impose the dominant ideology, whatever it may be.

Where the financial problems raised by productions in such new or "modernised" arts as the cinema, theatre, the decoration of monuments, large orchestras, opera, small-scale publishing, etc., cannot be solved by private enterprise, the state is usually asked to intervene, either directly, or in a roundabout way. Directly, it does so by financing production; indirectly, by stimulating the market.

FRANCE'S SPECIAL PLACE IN THE CINEMA

At this point, I should like to describe a novel policy which has proved effective in France.

It must be realised that the amazing growth of the art cinema movement in France was possible only because André Malraux understood that we live in a market economy and that if the market could be affected so would the product. If we could show, by programming in a large number of cinemas — and therefore by box-office receipts — that the public preferred a film which was not held to be a commercial prospect by the experts who controlled the market, to a film which they felt should be a commercial success but which in the end was no great shakes as a money-maker, we would be entitled to think we were transforming production. Now, if we look at the development of the cinema over the past twenty years, we have to admit that this wager made by cinema directors with a supporting nod from a cabinet minister has been won. They did not win it alone, however, but with the help of authors and critics and — this is the important point — of the public.

It was possible to affect the market by adopting a policy of encouraging it to prospect for a new audience, one that had a "cinema education" and was more interested in authors than stars. Spectators learned to queue for a film by John Ford or Bergman, Fellini or Richard Lester. When this happened, the so-called authors' cinema entered the romantic realm of artistic creation which is, as everyone has known since Hegel, the exaltation of absolute subjectivity. It can therefore be said that it is the cinema-goers who made possible the development of the art cinema.

The government's encouragement of the French Association of Art Cinemas, which was responsible for prospecting the market and showing it its "cultural" potential, took two forms: a slight reduction in taxation, and uncontrolled pricing of seats in a sector in which one-third of prices were blocked.

If the question of creation was posed in terms of market growth, then it followed that more importance must be attached to public opinion and public awareness; and also, that public opinion must be seen not as something static but in relation to the future. It had to be informed and educated. That is why, when designating cinemas, we opted for the concept of *action culturelle* or cultural development in preference to that of aesthetic orthodoxy. The thought of discriminating on aesthetic grounds was more than daunting. Who could judge? We all know the state liked Bonnat better than Renoir. We also felt that it was dangerous to give the state too much say in the evaluation of art by allowing it to make the final choice. Our preference also went to cultural development since it enabled us to resist a strong tendency towards élitism, which would have led us to have regard for the opinions of none but a minority of cinema enthusiasts. What appealed to us most in the idea of cultural development was the impetus inherent in the concept. We did not want to confirm the culture of a cultivated class nor yet to confine that class to its culture; what we wanted was to introduce culture to people who were not prepared for it. In short, we wanted to think as highly of spectators in the village cinema who had never seen the original version of a film but could enthuse over a work by Mizogushi as we did of those in a cinema around the corner from a university, for whom Mizogushi was already a commonplace. The result was cinemas in which the manager has become a *stimulator*. A broad and intense "cultural dialogue" has sprung up in small provincial towns.

THE NEED FOR ANIMATION AS A FORM OF CULTURAL DEVELOPMENT

Animation and the cultural dialogue have become an essential criterion for the designation of cinemas in the art cinema movement. The general impression seems to be that there is something unnatural in the consumption of culture; and that it must be learnt. As the costs of the conventional film industry become increasingly heavy and cinemas are being forced to close, the need to educate an audience has also become imperative: otherwise, cinemas can no longer cover their costs. Communities are quickly up in arms, for it is a hard thing when a small town sees its last "picture house" shutting down. It is soon compelled to reopen: the town has made it realise that it has a cultural mission; and so it joins the art-cinema movement.

Thus almost one hundred and fifty associations, cultural centres, youth and community development centres have now become part of the French Association of Art Cinemas. Their role in it is fundamental. They may not take a very effective part in the economic side of the process as yet, but perhaps that is not what we should ask of them. Perhaps the more educational part of cultural development should be reserved to them since, at the level of cultural dialogue, they are often equipped to act as intermediaries — a role for which, owing

to the public's lack of education, there is a crying need.

Thanks to these forms of encouragement, France now has eight hundred and fifty designated or candidate cinemas. It should be observed, however, that this policy has now reached its limits. Cinemas hardly need encouragement nowadays to show the films we recommend. Apart from a few disadvantaged regions, the art cinema movement has become self-propelling. But if this success shows a considerable change in cultural policy it is because at the same time as cinemas were being encouraged they were also being asked to undertake activities which were commercially hazardous. The risks they were forced to take increasingly compromised their financial equilibrium. This brought out the urgent need for support. In other words, as it became possible to dispense with market incentives, that same market, which we had exposed to the risks of any cultural venture, stood increasingly in need of assistance.

Encouragement has therefore given way to subsidy. The right solution, no doubt, would have been to maintain the incentives so that the market expansion and prospecting could continue and also, naturally, to increase the subsidies since, as everyone knows, subsidies are never sufficient, almost by definition.

THE ART CINEMA MOVEMENT IN THE WORLD

However that may be, with or without grants, with or without aid, the art cinema movement — that is, the organisation of cinemas assuming responsibility for the artistic aspect of the cinema, with all the far-reaching implications that entails, and particularly the encouragement of creation — is today growing rapidly throughout the world. The International Experimental and Art Film Theatres Confederation (CICAE), despite its extremely low budget and the fact that it cannot organise genuine prospecting throughout the world or group together all those who, knowingly or not, have adhered to its principles, now has members in more than twenty countries.

I would like to draw attention to a misapprehension which is still common, that is the idea that the member associations of the CICAE are sorts of trade unions for the defence of theatres' interests. If, I repeat, the art cinema movement has grown so large the reason is that it has committed itself, often at considerable risk, to the defence of films of high artistic and cultural quality which tended to be neglected, and that its aim is to encourage their production. I would say that art cinemas are cinematographic theatres whose managers have decided to make them into centres for the thoughtful communication of the cinematographic art, and this cannot be done without the presence of works representing this art form.

IMPORTANCE OF THE CINEMA THEATRE

The art cinema is the meeting point of the work and the public, and it tries to make use of its privileged position, on the one hand, to comply with the definition of a cultural centre by making the most important works of cinema art available to the greatest number of people and, on the other hand, to assist their production — and even their conception.

These cinemas, after all, consult public opinion daily. They submit works to the public taste. There is no thought, since the films must be paid for, of doing without the public. But it is not sole judge and jury, and its reluctance to make an effort is not indulged.

We have long known that the artist is ahead of his time; such men as Manet, Cézanne, Picasso, Wagner and Mahler, who were once jeered at, have now found their rightful place. The history of the arts in the past century has been a place for so much questioning of the specific languages of artforms that it is perfectly natural for the public to be initially disconcerted, stunned and irritated by works for which there is no precedent (even if the qualities which make them classics emerge a few years later). Only three years ago, the Cannes festival audience was swept by alternating howls of hilarity and rage during the showing of *Le Camion* by Marguerite Duras. Whole rows of spectators rose in protest at Bergman's *Fraises Sauvages*. Examples of this kind are legion. All we know is that Ingmar Bergman, R. W. Fassbinder, Carmelo Bene, Marguerite Duras, Wim Wenders and Helma Sanders must be allowed to express themselves. And how could they, if it were known in advance that no theatre would ever show their works to the public?

THE ARTIST AS A MINORITY FIGURE

The important point about the art cinema movement from the cultural point of view is that it has recognised the artist as a minority figure within the civilisation of the masses and it maintains that he is not automatically to be proscribed on that ground, that he belongs rather in the realm of research and experimentation which is part of the prospecting activities of industries, and that in the world of communications and the Logos, language research is no less essential than technical process research.

Means must be provided for ensuring a reasonable measure of commercial success for products which in conventional industrial structures would have none, because it is important that the dominant creative taste of the morrow can seek its roots in the minority creation of today.

The question really is whether Carmelo Bene, R. W. Fassbinder and Marguerite Duras will no longer have the resources to show their films or whether we are going to maintain a system of independent cinemas, with costs adapted to potential box-office receipts, which can continue to submit such films to the public for its judgment.

The art cinema's object, in showing these films, is not to stir up trouble: the object is, from the viewpoint of creativity, that their authors should be able to express themselves, because what they are expressing is our own future awareness.

As for the viewpoint of the public: the public must learn how to "read" them.

THE NEED TO EDUCATE THE PUBLIC

We all know Picasso's retort to the person who said to him, "I don't understand anything about what you do". "What about Chinese?" was the answer. "Do you understand Chinese? Well, Chinese can be learnt, and so can painting." And so can the cinema. Yet while curricula all over the world make provision for the study of languages, very few pay sufficient attention to the study of this audio-visual language, so complex, changing, confused, so violent, fascinating, disturbing and in such extensive use throughout the world.

The public's lack of education means that remedial action is needed at once. This is now the responsibility of the art cinemas, rather than the film clubs, or at any event it should be carried out in conjunction with them, since their activities must be reintroduced into the economics of film creation. The idea of the mediator, which we see developing in the minds of those responsible for the communication of works of art, entrusts to the theatres an essential task; *animation* has now become one of the main requirements for designation as an art cinema.

PROPOSALS

From this, we can see emerging the outline of a form of joint action by private industry and state, as regards the problems of cinematographic creation and its distribution to theatres.

THEATRES AS SPECIAL PLACES

I think that theatres can be associated with creation in three ways:

— Firstly, and very mechanically, they are where the money is made, on which the films' viability depends. Therefore, something must be done to see that this money quickly finds its way back to the creative source.

— Secondly, they are where what Luigi Comencini referred to at the Lisbon Symposium on "Cinema and the State" (June 1978) as the "cultural dialogue" takes place. It is in the cinema and after the film is over that communication (discussion and exchange of ideas) occurs, which we know to be the very foundation of all culture. Therefore, we must protect cinemas from irresponsible competition from television.

— And lastly, they are the unique site of mediation between art and the public mind. Therefore,

cinemas must be fully equipped to carry out cultural *animation*.

These three aspects of the activities of the art cinema movement would seem to provide an adequate basis for the relationships we would like to see develop between states and art cinemas.

If the state wants to invest public money in the production of cinematographic works, it must in some way be able to have these works made available to the public, with the hope of recouping its investment. It must therefore ensure that there is no decline in a market which is capable of reimbursing it. If all that is available is the limited market of the major circuits, and even if those circuits open their doors (which they do) to high quality work, it would soon have to face the difficulties raised by the distribution of certain films in theatres in which they cannot be shown to good effect, or which are too expensive to take the risk, or overloaded with other films.

We know the problem of sales points which are too expensive for the potential earnings of certain products. It is absurd to show a film which cannot hope to attract more than one thousand spectators a week in a theatre that cannot operate on fewer than five thousand. On the other hand, such a film will be shown to advantage in a smaller, less expensive theatre, where the public will learn to seek it out. The art cinema movement has encouraged independent cinemas which have greater freedom of choice and are able to take greater risks than the chain theatres with their enormous overheads.

In short, we ask the state to consider that in order for a cinematographic culture to exist, and creation to be made easier, the public must be educated, there must be an efficient distribution system, and there must be direct support for production.

As regards the education of the public, it is obviously the responsibility of the state to:

- *Include instruction in the "reception" of audio-visual material in national educational curricula*. Just as there would be no written literature if no one knew how to read, there can be no cinematographic art unless people know how to "read" its images. And just as children are taught to read the works of great authors, poets, novelists and dramatists, by being given their texts to read, so they should be taught to "read" the cinema by being shown its masterpieces. The state should support creative activity by providing archives and education. Film conservation is another aspect of the defence of artistic creation. To enable art cinemas to pursue their work of educating the public, the major film classics must be conserved, and the public taught to "read" them either at school, or by some other means. Under the Third Republic in France, as we know, the army undertook to eliminate illiteracy in the nation, thereby helping to establish foundations for a common awareness. Now that we are allegedly moving on from the Gutenberg galaxy into the audio-visual civilisation, what a fine ambition it would be for the armies of the world to teach the new audio-visual language, which previous generations imagined would become universal!

- *Create jobs for film culture animateurs*, who would be employed by the Ministry of Education but would work in cinemas.

- *Collect works in film libraries.*

- Enable film libraries to provide copies from their archives to the public, and, in the first instance, to the film theatres seeking *to span the gap between public and film.*

- *Support the educational work of film clubs.*

- Support *the efforts of the art cinema movement* to intensify and enlarge the cultural dialogue in its theatres and to present the most advanced works of the cinematographic art.

- Assist the art cinema movement *in encouraging the market* to assume responsibility for its cultural development.

It is also for the state to acknowledge the special cultural status of art cinemas, to encourage creation where it does not exist and to support efforts where they have been begun, by appropriate tax relief or by a system of subsidies.

Since no art seems able to develop properly without freedom, it is also for the state to ensure (freedom of creation being previously established) that cinemas have freedom of communication and distribution.

INTERNATIONALISATION OF THE ART CINEMA MARKET

This it can do by sheltering cinemas from television distribution monopolies, by giving them distribution priority for audio-visual works, by removing any existing regulations on quotas for the import of art films and by removing customs barriers for these films.

To my mind, the prominence of the role played by cinemas in the cultural dialogue, combined with mechanisms of the market in the financing of artistic creation, fully explain why special care should be taken with the internationalisation of the art cinema market.

Whilst it is true that nowadays culture is frequently assigned the difficult task of establishing the spiritual values of which our civilisation is composed, it is up to the artists to demand that all societies recognise the absolutely essential role of freedom in creation in general, including cinematographic creation, and provide supportive measures to protect creators from political domination, bureaucratic encumbrance and the deformations — or even amputations — of the culture industry.

AID AND PRODUCTION

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INTRODUCTION

This paper sets out to review a complex and often controversial situation as fully as is possible in a relatively short space, and to do so from both the legal (application of the Treaty of Rome) and economic points of view. It aims above all to give food for thought on a series of problems arising in relation to the long-standing question asked all over Europe: "How can art and creativity be fostered in the cinema while at the same time ensuring commercial viability?".

WHAT? — What is meant by aid?

Where does the money come from?

Establishing "aid" means, first and foremost, setting aside funds which are subsequently distributed. It is essentially, therefore, the source of those funds which distinguishes the type of "aid". But what does the term "aid" mean? The European Commission in Brussels considers as aid any financial intervention by the public authorities in the ordinary operation of market forces in an economic sector (whence the term "sectoral aid" in contrast, for example, to "regional aid"). A fuller definition may be found in the theory of subsidies used by the German expert, B. Dreher, a summary of which appears in Appendix I to my report for the Council of Europe's Lisbon Symposium on "Cinema and the State" 1978 (see Doc. 4306, p. 53).

One or more of the following four types of financial intervention may be used by the public authorities:[1]

a. direct intervention (grants, *stricto sensu*);

b. relinquishing revenue by means of tax concessions;

c. granting (financial) "guarantees" or loans at preferential rates;

d. transfers of money between private persons on the orders of the state.

Comments:

- Form *d* is particularly important in the cinema sector: it is the system of aid funded from a proportion of box-office receipts (in France: TSA; in the Federal Republic of Germany: Abgabe; in the United Kingdom: Levy) and is generally considered to be "parafiscal";[2]

- as television is playing an increasingly open part in the financing of films for the cinema (specific agreements in France and the Federal Republic of Germany), a type *e* (television contributions to cinema aid funds) might be added;

- lastly, a country such as the Netherlands has a further type of aid: the state subsidy is supplemented by funds from the Dutch Cinema Association (NBB — *Nederlandse Bioscoopbond*), the employers' trade association.

(See Table 1)

WHO? — Who receives aid?

At first, the basic purpose of aid was nearly always to support film *production* and sometimes exhibition (cinema theatres) too: aid to cinemas in France from the start, though abandoned between 1959 and 1967; small-scale aid to cinemas in the Federal Republic of Germany and, to a lesser extent, in Belgium; whereas in other countries this was never the case (e.g. no aid to cinemas in the United Kingdom or until quite recently, in Austria).

Once instituted, an aid system tends with the passage of time to widen the field of beneficiaries, with "aid" being given ultimately to all branches of the film industry as well as to "parallel" bodies such as those engaged in research, export promotion. The United Kingdom is noteworthy for its small number of beneficiaries, while in France the opposite is true (Italy and the Federal Republic of Germany are almost on a par with France).

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1. That is the state (central government) and/or the regions or provinces (in the Federal Republic of Germany the *Länder* provide aid for the cinema, and in Italy several regions make cultural grants).
2. In Italy, the entertainment tax introduced at the same time as VAT is considered by some to be an "aid tax" under another name.

HOW? — How is aid awarded?

At bottom, there are only two possible methods of awarding aid, "automatic" and "selective": *automatic* when aid is proportional to box office receipts (i.e. a market criterion = the public's choice), selective when a sum of money is granted to aid one film rather than another (i.e. a jury criterion: a selection committee's choice).

Each method has its supporters and its opponents, just as each has its advantages and disadvantages. As it is impossible to have the one without the other, some countries combine both methods, for example France and Italy (where the automatic outweighs the selective) and the Federal Republic of Germany (where the reverse largely applies).

But two other choices need to be made too:

- should aid (particularly selective aid) be repayable or not?
- should aid be reinvestable (in another film) or not?

In *France*, the advance on receipts *(avance sur recettes)* and in the *Federal Republic of Germany* the "aid to particular projects" *(Projekts förderung)* are repayable.

In the *United Kingdom* and *Italy* (automatic) aid is not conditional as in France and the Federal Republic of Germany on reinvestment in a new film,[1] and this will inevitably be a problem in the event of European harmonisation.

HOW MUCH? — What amounts are awarded?

A valid comparison of the amounts awarded as aid is difficult for several reasons: gaps in published statistics (inadequate economic transparency of the system), differing sources of funds, differing beneficiaries, different methods of awarding, etc. We may nevertheless attempt to construct a comparative table while emphasising that it can only be approximate.[2]

A distinction needs to be made between countries which are "small" from the film-market and film-production points of view, and those which are bigger. It is also worthwhile to consider — something rarely done hitherto — the "amount of aid per film aided" parameter, as the same final result can be achieved with a "large" aid fund spread over a large volume of production (as in France and Italy) or with a "small" aid fund shared out between relatively few films (as in the United Kingdom and, especially, in the Federal Republic of Germany).

(See Table 3)

PROBLEMS — Institutional Europe

The cinema and the Council of Europe

Institutional Europe means the Council of Europe and the European Economic Community (EEC). The Council of Europe has devoted special attention to the question of the cinema since its Lisbon Symposium on "Cinema and the State" (June 1978) and Mr J. Voogd's subsequent report which resulted, on 11 May 1979, in the voting of Recommendation 862 suggesting a number of measures with regard to the cinema in Europe, one of which was aid. That recommendation was, in accordance with the usual procedure, forwarded to the Committee of Ministers which has not yet announced what action it will take on it. Later, on 23 November 1979, the first colloquy organised by the *"Association Européenne pour le Développement Cultural pour le Cinéma d'Art et d'Essai"* (European Association for Cultural Development through the Art Cinema), which had just been created in Strasbourg, was held under Council of Europe auspices. Finally, a conference was held in Strasbourg on 28-30 April 1980 on "The State's role vis-à-vis the culture industries", the cinema being one of the four sectors considered.

The cinema and the EEC

With regard to the EEC, Article 92 of the Treaty of Rome states that, "Except where otherwise provided for in this Treaty, any aid, granted by a member state or by means of state resources, in any manner whatsoever, . . . shall . . . be deemed to be incompatible with the Common Market", the reference here being to aid to a particular activity, known as "sectoral" aid. It therefore comes as no surprise that the European Commission, the "guardian" of the Treaty, very quickly came up against the problems of aid in the course of its examination of film-industry financing, an examination resulting, in 1960, in Brussels initiating a permanent dialogue on the subject with the civil servants responsible for the cinema in each of the member countries (meetings of "government experts").

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1. One argument *in favour* of obligatory non-reinvestment is that it is thereby possible to attract to film production "external" capital which its investors may not want to tie up permanently in film-making. One argument *against* reinvestment is that it tends to lead, if not to over-production, at least to production that takes little notice of market demands (the main aim being to pocket the aid to which one is entitled).
2. But it is precisely by publishing such a table that we may hope to fill the gaps in it and correct any inaccuracies.

Ever since August 1979, this dialogue between European and national civil servants has been beset by disagreement. Why? In its desire to make such aid conform to the general theory on competition worked out in Brussels and in accordance with a philosophy clearly spelled out in his day by P. Uri ("the purpose of aid must be to help the sector in question to do without aid"),[1] the European Commission circulated a *working paper*[2] on action to be taken at Community level, notably as regards competition and aid and addressed a *letter* dated 23 August 1977 to the various governments. That letter announced a multilateral meeting of government experts for 30 September 1977 and said that, in the event of an agreement on aid proving impossible, and in accordance with Community law, the Commission "might initiate against the national schemes in force the procedures laid down in the EEC Treaty".

The procedures in question were in fact initiated on 24 August 1979 when notice was served by the European Commission on France, Italy, the Federal Republic of Germany, the United Kingdom and Denmark[3] pursuant to Article 169 of the Treaty. Although no progress was made at the 1977 meeting, the governments had at least been left in no doubt at all as to the Commission's position since a memorandum was distributed at the meeting setting out "the present situation as regards the free movement of persons and the free provision of services in the film sector". That memorandum of a legal nature set out the "implications for the cinema" of a series of particularly important decisions by the Court of Justice of the European Communities in 1974.[4] The industry, represented by the CICCE *(Comité des Industries Cinématographiques de la Communauté Européenne)*, FIAD (International Federation of Associations of Film Distributors), FEITC (European Federation of the Technical Branches of the Film Industry) and UIEC (International Union of Cinematographic Exhibitors), had talks on 19 June 1978 with the EEC Commissioner, Viscount Davignon, from whom a memorandum was received shortly afterwards on "the compatibility of film-industry aid acts with the EEC Treaty".

In early 1979 the situation was as follows: the governments had neither accepted the progressive harmonisation of aids nor refuted the interpretation of Community law relating to the cinema presented by the legal department of the European Commission. It is thus hard to see what else the Commission could do after a fruitless dialogue with the member states lasting several years except set in motion the machinery provided for in the Treaty. This is what it did on 24 August 1979 once the Federal Republic of Germany had promulgated its new Cinema Act in which the nationality criteria for films took no account of the comments made earlier by Brussels.[5] At the same time, the European film federations adopted an open-door attitude calling for the free movement of film-makers, the free provision of services and the harmonisation of aids; on the other hand, they suggested that the Commission take action to reach a European solution to the thorny problem of relations between the cinema and television.[6] Two years later (summer 1981), the situation had evolved as follows:

— After negotiations with the European Commission, the United Kingdom passed a new Film Act (July 1980) amending the nationality criteria of films classed as "British" and therefore entitled to aid: henceforth, film-makers from other EEC countries may assist in the making of such films on the same terms as British nationals.[7]

— As the Federal Republic of Germany, Italy and Denmark took no action following the service of notice of August 1979, the second stage of the procedure was initiated with a "reasoned opinion" decided on by Brussels in June 1981.

— France,[8] despite its verbal undertaking in 1980, to amend its legislation, had taken no action as at 30 June 1981, and thus triggered off the Brussels Committee on Infringements decision to go ahead in this instance too with the "reasoned opinion" stage.

In July 1981, Brussels considered that this state of affairs would — in all likelihood — end up at the European Court of Justice. Was it not reasonable, in fact, to assume that the four states in question were likely to pay no more attention to the "reasoned opinion" than they had to the initial "service of notice", and that consequently the Commission ought to envisage referring the matter to the European Court of Justice in autumn 1981? And all the more so since the British Government, as was to be expected (and no doubt under pressure to do so from the powerful film-industry unions), had inevitably insisted that the Commission compel the other countries to implement the same "freedom" that it had itself agreed to enact. As to the outcome of such an appeal, Brussels felt that it stood every chance of obtaining from the European Court confirmation of the

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1. Consequently the aid schemes authorised by Brussels must normally involve limited and progressively reduced amounts and be satisfactorily "transparent" economically.
2. Doc. IV/128/1977 pointing out that the member states had not responded to calls made in 1970 and 1973 to draw up "guidelines" such as: gradual opening of national aids, Community co-financing and European co-distribution.
3. This notice does not affect the Belgian and Netherlands aid schemes because of their selective nature and low volume.
4. Decisions based on the concept of "direct applicability" of fundamental articles in the Treaty:
   — Art. 48 (free movement of persons)
   — Art. 52 (freedom of establishment)
   — Art. 59 (freedom to provide services).
5. In accordance with Article 93-3, Bonn had notified the European Commission of the text of the bill; the same article states that, in the event of a state's failing to take note of the Commission's observations, the Commission shall initiate the procedure (as laid down in Article 92) and the state in question may not then implement the projected aid. And yet Bonn did do so, because the new form of aid has been in operation since that time. The following hypothetical question might therefore be asked: in the light of certain decisions by the European Court of Justice in Luxembourg on parafiscal taxation, would not an appeal to the Court against the German aid scheme result in an obligation to repay the proceeds of an illegal levy?
6. On 30 April 1981, the CICCE lodged a complaint against television for abuse of a dominant position with the Directorate-General for Competition (Brussels, DG IV).
7. See *Film Act (1980)*, clause 8 (the implementing regulations for which were published in July 1981).
8. France was the subject of three other procedures: against the special levy on "X-certificate" films from EEC countries, against the quota for "French" films (instead of "films of Community origin") on television, and, like Denmark, against the Franco-Danish co-production agreement for non-observance of the free movement of film-makers (on the understanding that all other co-production agreements were in fact also in breach of Community regulations).

principle that the nationality criteria had to be opened up.[1] Furthermore, the possibility was not ruled out that the Court, if the question of the nationality criteria were referred to it by the Commission, might also examine the methods of financing such aid schemes: if it did, there was every reason to believe that, in view of its earlier decisions on parafiscal taxes, the levy on box-office receipts in force in France and the Federal Republic of Germany would be deemed incompatible with Community law.[2]

If this were to happen, it would give rise to a *situation that was, to say the least, complicated.* France, Italy, the Federal Republic of Germany and Denmark would be obliged to open up their nationality criteria, and in addition, France and the Federal Republic of Germany would probably be obliged to abolish aid or to change the method of financing it. But would not these two countries then challenge the British aid levy and ask that the exact nature of the levy on box-office receipts introduced in Italy at the same time as VAT be examined? In other words, by the domino effect (possibly intended by the European Commission), doubt would be cast on the compromise reached by London as a result of English pragmatism and on the tranquillity achieved by Rome as a result of Italian artfulness. In practice, this whole hypothesis would undoubtedly result in the national administrations being constrained to undertake the very same concerted general action on ways of harmonising and co-ordinating aid, financing and distribution systems that had been sought in vain by the Commission for years and that had, moreover, been recommended by the main European trade associations.[3]

In what spirit, then, did Viscount Davignon initiate the procedure under Article 169? This point needs to be clarified, especially as his decision was greeted by a number of declarations whose vehemence reflects above all a manifest lack of understanding of the exact nature of the problem. The Commission's approach may be summarised as follows.[4] The cinema is a cultural phenomemon that plays a major role in contemporary society, particularly vis-à-vis young people. The cultural reality of Europe is, for its part, made up of national or even provincial cultural riches that must be harnessed but not destroyed. That cultural reality, particularly as regards the film sector, must be affirmed and disseminated, and this means that its industrial and economic aspects must be examined, a need all the greater in view of the impact of new technologies in the audiovisual field. But, for all that, it would be wrong for the Commission to seek to impose a model:[5] it considers that *aids to the Cinema* are useful and that they must simply conform to Community law whose rule is non-discrimination.[6] And, just as bilateralism in co-productions now offers too restricted a framework from which we need to break loose, so aids must be restructured and turned into a truly effective instrument to serve the European film industry. Viscount Davignon therefore reiterated his conviction that "the time is approaching when each of us will realise that the sum of the drawbacks inherent in solutions *lacking a European dimension* outweighs the benefits of *national protectionist solutions*" and concluded with an urgent appeal to the industry to take the initiative in European co-operation, the purpose of which would be to help determine objectives and priorities, fix a time schedule and pinpoint national and European solutions;[7] the Commission was ready to give active support to the elaboration of such a programme.[8]

This, then is the position (as at 1 August 1981) of the European cinema as regards aids and Community law. It may, of course, be objected that this is merely the formal, legal aspect of a question involving much wider-ranging problems. This is true, and the Commission recognises the fact. In sum, the real problems have still to be solved.

Before giving an outline list of those problems and of the questions that seem to deserve an answer, I would point out that the legal requirements of the Treaty have at least been valuable in compelling the spelling out of a theory of competition — in which aid is one factor — and a study of its implications for the cinema: for the film industry, the exercise is perhaps something more than academic ... It should also be noted that, although the work of two Directorates-General at the Commission — DG III (Internal Market) and DG IV (Competition) — has, in a manner of speaking, got bogged down in legalism in the absence of any intergovernmental agreement, another Directorate-General (DG XII) dealing with cultural questions has also, although indirectly, broached the problems of the cinema. The positive side of this work — limited though it is through lack of co-ordination

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1. Furthermore, Brussels also considers as contrary to Community law:

a. the new Italian cinema bill (to replace Law No. 1213) allowing a non-Italian belonging to the Italian cultural orbit (this condition is deemed fulfilled after two years' residence in Italy) to work in an "Italian" film and thus be entitled to aid;

b. the special Franco-German co-production agreement of July 1980 (combining the two selective aid schemes for a limited number of films).

In the first case, an American or a Chinese who had lived in Rome for two years could take part in an Italian film, but not a Frenchman or a German, etc. In the second case, the free movement of EEC nationals is no longer operative (here, as with the other co-production agreements in force, it would be sufficient to say: "film made by cineasts who are French, and/or German, and/or nationals of the member countries ...").

2. The British and German aid schemes, like the French scheme, are funded by a parafiscal levy and therefore might also be declared "illegal". In fact, the reason why Lord Carrington came so rapidly to an agreement with Viscount Davignon on the nationality criteria in 1979-80 is that he had been assured that in so doing he could consider his aid levy as immune from subsequent proceedings. To which might be added that it was also because the Foreign Office reckoned that the chance thus made in the definition of "British" films would be of little practical consequence.

3. Confirmation of this attitude may be seen in the CICCE's express request to the European Commission in May 1981 not to regard as a precedent the Court's argument in Rome in the "De Sica case" in which national status and hence aid had been refused by the Ministry of Tourism and Entertainment to one of De Sica's films on the grounds that the director now had French and not Italian nationality.

4. Based on the statement by Viscount Davignon in Paris on 13 November 1980 to members of the cinema industry at a lunch-debate.

5. Curiously enough, this attitude does not always win the approval of the professionals: for example the Italian producer Zingarelli criticised Brussels for its failure to give a lead (article entitled "Wake up, Europe" in: *Cinema d'Oggi*, Rome). Is the profession criticising the "Eurocrats" for being insufficiently "technocratic"?

6. Whence the obligation to "open up": the nationality criteria.

7. Note that this distinction between two levels of intervention is to be found in Recommendation 862 adopted by the Parliamentary Assembly of the Council of Europe in May 1979 in response to the debates at the Lisbon Symposium (June 1978).

8. In making such a proposal, the Commissioner bore in mind the project just submitted to and approved by him for the creation in the near future of an annual European film festival to be preceded by a conference on the whole range of problems facing the European cinema.

with the Commission's other departments — lies in the reports by experts, two of which deserve special attention: an *analysis of the employment problems facing cultural workers in Europe* (by Mrs M.M. Krust, Paris, 1977), and *an analysis of the film distribution sector in Europe* (by A. Filson, London, February 1980). Lastly, there have been signs recently that the Commission has woken up to the growing importance of the audiovisual sector, of which cinema is an integral part. Would this not justify, in fact, intervention by the European authorities[1] before the die is cast by forces whose main concern is not necessarily to build a "Citizens' Europe" and promote the cultural identity of Europe? And this awakening at Brussels is matched by initiatives in the European Parliament where, in a short space of time, members have tabled several motions for resolutions[2] not only on television broadcasting but also on the cinema in Europe.

While these are the institutional and legal problems facing the cinema in the EEC, other problems remain and an analysis of them calls into question the role of aid.

PROBLEMS — Economic and commercial constraints

Might aid raise as many problems as it sets out to solve? At all events, a number of questions spring to mind, for example:

a. Aid to creation: is it defensible without similar aid to production?

b. Aid to production: is it defensible without similar aid to distribution?

c. Aid to production: should it be envisaged on a permanent or temporary basis?

d. Aid to production: should it be automatic or selective? Should it be conditional on reinvestment in a new film or be used at the discretion of the beneficiary?

e. Aid to production: is it conceivable without taking account of the volume and value (cost) of the production?

f. Television participation in aid to production: a good or a bad thing?

g. Aid to production: is it conceivable without taking account of the "new audio-visual media" factor?

. . . And this list is not exhaustive.

Creation and production

Quite obviously, no film can be made until the idea behind it has germinated, until someone has chosen a subject; whence the principle of aid to creation. But is it possible for creation to exist independently of production and, hence, for aid to be given to the one and not to the other? Before this question can be answered, we need to agree on a definition of the concept of creation. Some[3] argue that the word "creation" is highly ambiguous. Does it refer to the immediate form of expression of an idea or a subject by its author and performers? Or is it simply the outcome of the interplay between the public and the idea made flesh? Indeed, when we consider the theatre and the crisis it is going through in France[4] we may reasonably wonder whether we have not drifted into "an unreasoned emphasis on creation at all costs". The pleasure experienced by the authors and performers of a new work is, of course, legitimate, but at the same time we must be alive to the danger of such pleasure becoming narcissistic if it does not strive constantly to satisfy the spectator. In a word, have we not paid too little attention, in the pursuit of creativity, to cultivating "the great secret of the art of pleasing",[5] especially as the public, regrettable though this may be, "tends to prefer a tried and tested work to a play for which it has no point of reference". If these observations can be applied to the cinema, the lesson to be learned is that aid is scarcely conceivable except in the form of "aid to creativity" *and* "aid to production". But that is not all: does aid to production make sense without aid to distribution? The United Kingdom at any rate offers a totally unambiguous answer to this question. At an interprofessional conference organised by AIP (Association of Independent Producers) on the crisis facing the British film industry,[6] it was declared that "from the point of view of art a film-maker's work is finished only when and if the film is shown in a cinema"; the report also posits the principle that film-making is inescapably both an industry and an art, and that production and exhibition cannot reasonably be considered separately. The following assumption may therefore be made:

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1. See chapter entitled "European media policy", in report by C. Degand (Lisbon Symposium), Doc. 4306, p. 48.

2. Motion for a resolution on "Radio and television broadcasting in the European Community" tabled on 18 September 1980 by W. Hahn, Pedini *et al.* Motion for a resolution on "the promotion of European films" tabled on 7 May 1981 by L. Tindemans, Pedini, Hahn, Diligent *et al.* Motion for a resolution on "Film-making in the Community countries" tabled on 6 July 1981 by Mrs Pruvot, Mr Lecanuet, *et al.* These texts were published in Nos. 33, 34 and 35 of *Lettre mensuelle d'informations européennes* distributed by the Centre National de la Cinématographie (CNC — European Film Office — Paris).

3. This view and what follows are P. A. Touchard's response to the report *Un projet pour le théâtre* presented in 1980 by a working party set up by the French Ministry of Culture. Touchard is struck by the disappearance from the theatre of what J. Vilar described as the spirit of "public service". He also deplores the impression given by the working party that the crisis in the theatre boils down to the insufficiency of state aid — and his view appears to be shared by M. R. Abiracched of the private office of the new Minister for Culture who said in July 1981: "There is a welfare state mentality which simply cannot be allowed to continue".

4. In Italy, on the other hand, theatre attendances rose by 0.4% in 1979 despite rising prices. Observers reckon that authors, directors and actors satisfied the demands of their audiences, including young people. In the same period cinema attendances fell by 13.3%.

5. Compare J. P. Belmondo's comments: ". . . by becoming too intellectual, the theatre has lost touch with its audiences and they have deserted it . . .".

6. Report on *The Film Industry — 1977* produced by the interprofessional committee under the chairmanship of R. Bolt at the instigation of AIP.

a. no aid to creation *per se* without aid to production, if only because it is difficult to determine the exact level at which creation takes place;

b. no aid to production without aid to distribution, since ratification by the public is indispensable, especially for an art form as "popular" as the cinema; besides which, the financing of aid is generally dependent on the number of attendances.

Agreement still has to be reached first on the *ills and shortcomings* of the cinema and of production in Europe. Is J. P. Belmondo right when he says that the most important single affliction is "a chronic shortage of authors", leading to the need to "hunt for scripts"? A similar assessment is made by the French producer and distributor T. Molière: "the main difficulty lies in finding subjects with an international appeal", and he even adds that "we ought to curb our propensity to contemplate our navels ...". Others see the problem of the European cinema, particularly in the light of the American competition, as being rooted not in the weakness of the distribution circuit[1] but in the shortage of talent among European filmmakers. To this we might answer that there will obviously never be a surfeit of talent and that it cannot be created by decree or indeed bought. On the other hand, "talent knows no frontiers ..."[2] and this is why the removal of the last barriers that may still inhibit its free movement should not be viewed with alarm. We may therefore infer that there are structures which tend to foster the development of talent and creativity and that it is those structures we need to endeavour to establish.[3]

Moreover, the fact that there are some *structures* that are better than others seems to be proved by the relationship that exists between European film-makers and the American film industry. When talented European directors and performers make their films in Hollywood or give the (worldwide and sometimes also European) distribution rights on their work to one of the "Majors", is this not evidence of Europe's lack of "facilities" for bringing a project to fruition and for its vital corollary[4] — distribution? Moreover, the experience of one country — and one whose films generally are highly regarded — and of its filmmakers in particular further bears out this point: in Italy, directors such as Antonioni and Fellini have declared their readiness to emigrate to the USA and give publicly as their reasons the fact that "distribution in Italy is controlled by people of narrow tastes ... In the USA, the situation is exciting ... the American film industry is so well organised, it has so many triumphs to its credit, and yet it has not lost the pioneering spirit ...". This is perhaps a slight exaggeration. It is at any rate in Italy, too, that another solution — "European" this time — has been found to the same problem: an equal share association between the producer Cristaldi and CLT (Luxembourg Television Company). In creating the "VIDES International" company with CLT, Mr Cristaldi recognised that the Italian market alone no longer gave the Italian film industry the security and resources it had hitherto provided.[5]

The message, then, is that the European film industry is badly organised. Europe has certainly expanded "structures" at the national level, but it would appear that this is no longer enough to promote either talent or commercial efficiency and that the more numerous and scattered the structures are, the greater the need to co-ordinate — and sometimes perhaps to integrate — them on a Europe-wide basis. No doubt some will say that there is nothing wrong in having European talent and creativity "distributed" by an American multinational corporation. The problem is that distribution is a financially profitable operation ... unless we are to believe that the "Majors" are philanthropists.[6] The net effect is that the income generated by European creativity falls into the hands of others and that Europeans thereby deprive themselves of the financial wherewithal to control their own destiny. It is easy to see that a European creator can make a bigger name for himself by establishing his reputation in Hollywood; but it is hard to see what benefit could accrue to the European film sector if this practice were the norm.[7] Lastly, it should not be forgotten that, in being distributed by a "Major", a "European" product is not even certain of benefiting financially.[8]

The British experience

What is the economic state of the European cinema and what part is played by aid? The British experience deserves attention. Aid has been given since 1950 and was once more renewed for five years on 17 July 1980. What distinguishes the system from its continental counterparts is its comparative simplicity: aid is given almost exclusively to film production (85% of a total of £ 6.75 million that is £ 5 768 000), the remainder going to a few secondary beneficiaries; it is not conditional on reinvestment and is calculated using the "automatic" method, the amount of aid being therefore proportional to the film's box-office receipts. However, after twenty-five years' operation, an important modification was made to the principles underlying

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1. This view is shared by Prof. J. C. Batz (Brussels), A. Filson (London), Prof. T. Guback (USA) and by the author of this report.
2. Serge Moatti, French film producer.
3. At the Council of Europe's Lisbon Symposium (June 1978) H. Schein (Sweden) noted the importance of an "atmosphere" that might encourage or discourage creativity. Similarly, in connection with music publishing, D. Toscan du Plantier (Gaumont) believes that "renewed emphasis must be given to the role of the talented individual who brings out talent in others".
4. This applies to the art cinema too: "There is no thought, since the films must be paid for, of doing without the public" says J. Lescure in his paper for the Strasbourg Colloquy (2 October 1981), Doc CC-Coll-CN 1; similarly, M. Karmitz states that "from production to exhibition a film forms a whole".
5. Compare the view expressed by L. Comencini at Lisbon (June 1978): "I can only make Italian films, but I need European structures to finance and distribute them" and apparently shared by another Italian director Mrs Liliana Cavani. It should be added that CLT has also made a similar agreement with a British company, *Consolidated*.
6. Another problem is that the "Majors" are generally criticised for being inexperienced in distributing "small films". But when, in fact, do they take on the distribution of such films? Rarely, and no doubt "by mistake".
7. In this way, Europeans make their mark, and sometimes very successfully, but they do not build an "industry". In sum, the gilt without the gingerbread!
8. Mr Toscan du Plantier had this experience with a Gaumont film which had none the less been very successful in American cinemas: the American "independents" fare no better as the executive scriptwriter and producer of "Alien" explained in detail in the aftermath of their accounting "differences" with 20th Century Fox who distributed the film (see *Film Echange*, Paris, autumn 1980, pp. 31-88). It would likewise be interesting to know what Seitz and Artemis Films, the two German firms which produced *The Tin Drum*, were finally paid by "United Artists" who distributed this highly successful film ...

the system: part of the aid fund (£ 200 000 and subsequently £ 400 000 per annum) was set aside to enable film-makers and producers to prepare projects for films. This change[1] amounted to giving British aid to production an "upstream" appendage concerned with scripts and based on the "selective" method. Applications were to be made by at least two people (an author and a producer or director) and enabled a loan of up to £ 17 500 to be obtained, of which not more than £ 7 000 could be paid to the author of the scripts; the loan was to be repaid if the projected film was made. The Film Act 1980, which amended the regulations governing the National Film Finance Council (NFFC), marked the end of an experiment which had apparently not produced the results that had been hoped for.

At all events, the position of the cinema is — and it is the British themselves who admit it — alarming. "What has happened to the British film industry . . . or is there life after death?" was the theme of a memorandum by the Boulting brothers, film producers, on the crisis and their suggested remedies. For his part, Mr Hassan, director of the NFFC, listed in his annual report the growing difficulties facing film-financing in the United Kingdom: film-making is expensive and financial resources are limited — 75% of receipts are cornered by American films, the dissemination of which creates among audiences a demand for more American films, whereas the truly English film has to create its own audience each time; the producer can do nothing without distribution, which is the "key sector" and largely dominated by two[2] giants; it is dangerous for British film-makers to have no choice except between the "multi-million dollar blockbuster" and the avant-garde or experimental film representing a few million pounds; also dangerous is the distinction between "commercial" and creative films, since ultimately it would "discourage the creation of a truly popular art and encourage films which could only offer worthless amusement for the public or self-glorification for the film-makers" as Mr. Hassan comments.

It is therefore no surprise that in London more and more questions are being asked, as is borne out by the *Terry Report* (1976) and the reports of the Wilson Committee that came after it. One of the first steps was Mr Meacher's decision in 1978, then Minister for Trade in the Labour Government, henceforth to publish the amount of aid granted to each film. Publication of the figures and the names of the beneficiaries came as something of a bombshell after twenty-eight years of secrecy.[3] It emerged that:

a. a few high-budget films got most aid;

b. those films were generally distributed and/or produced by American firms which were, moreover, free to repatriate the sums thus received to the USA as reinvestment is not obligatory;

c. aid went to distributors (including subsidiaries of the "Majors") more often than to producers;

d. the majority of "low-budget" films were "X" films with low production costs;

e. a short film programmed as the supporting film to a successful full-length feature could attract aid several times higher than its production costs. It is therefore not surprising that, on 29 November 1979, the Minister introduced a series of changes, in particular fixing a "ceiling" on the aid that could be granted to any one film of £ 500 000 for a full-length feature and £ 30 000 for a short film. On the other hand, the Film Act 1980 gave no satisfaction on a demand which was none the less winning increasing support in British film circles: as in 1950, British cinemas were refused any form of aid.

The German experience

The German experience provides food for thought on other questions. Federal aid is recent in that it was introduced as late as 1968; it has been modified several times in an attempt to apply the lessons of its own experience and that of its neighbours; it is largely given according to the selective method; there is a strong element of television co-financing on the one hand and regional aid on the other; lastly, the German market is dominated to a greater extent than its neighbours' by firms based in Hollywood which, in order to manage their German cinema-operator customers, have grouped themselves into a sales cartel.[4] Thirteen years after the introduction of aid, the position of the German film industry still gives rise to controversy, if not anxiety. Let us look at a few statistics:

a. the various forms of aid amount in 1981 to a total of 80 million DM, of which about 70 million DM are for production;

b. the volume of production is in the region of 60 films;

c. cinema attendances rose over a four-year period (1977-80) by 15%;

d. German films hold in the region of 10% of the German market (through a peak of 16% was reached in 1979).

On the basis of these figures, and despite the fact that in an industry of emotion such as the cinema visceral reactions easily get the better of reasoned argument, we can nevertheless draw some conclusions:

a. never before have German producers and directors had so many sources of finance available *(see Table 3)*;

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1. Secretary of State for Trade's decision of 12 July 1976 on the operation of the National Film Development Fund (NFDF).
2. The government has again referred the matter to the Monopolies and Mergers Commission: an enquiry is therefore being made, for using essentially on the *Rank* and *EMI* circuits.
3. *The Economist* magazine's reaction was that "these figures are so scandalous that if they had been published earlier, aid would have been stopped long ago . . . (10 February 1979).
4. This cartel constituted by the members of MPEA (Motion Picture Exporters of America) was authorised by the Federal Cartel Office *(Bundeskartellamt — BKA)* in 1975 despite opposition from the cinema operators.

b. cinema admissions are up, but American films are benefiting: 54.9% of the market in 1980 as against 9.3% for German films, whereas the latter had averaged 32.4% in the eight years prior to the introduction of aid (1960-67) *(see Table 5)*;

c. the volume of production remains on the low side;

d. aid to distribution and the market is low, while aid to film-making accounts for 75% of all aid; of the latter figure, 55% is granted on the selective method, and this figure rises to nearly 60% if the premiums and prizes awarded by the Federal Ministry of the Interior (6 million DM) are included.

Viewed in a European context, these facts take on a different light:

a. As regards the market, cinema admissions are rising faster in Germany than in France, while in Italy, where attendances are still very much higher in absolute terms, the overall pattern of decline continues unabated. On the other hand, German films hold a share of their own market which is not only small — the French and Italian levels are *four times* higher — but also declining: it is now, after thirteen years of aid, only one-third of what it was without aid . . .

b. As regards production, the German output is still, despite aid, only 40% of that of each of its neighbours. But if the "average aid per film aided" is calculated, German films are at a distinct advantage as the aid available to each film is approximately two and a half times greater than the aid available to a French or Italian film. Lastly, the "selective" portion of the aid given to the German film industry is particularly high, representing as it does roughly three times the amount so given in aid to production in France (17%);

c. As regards external trade, the trade balance is heavily in deficit: the German film industry imports seven times what it exports *(see Table 4)* and, while the deficit with the USA is particularly heavy (12 times greater), German films hardly do any better on the European market where they attract only three film-goers in every 100, compared with 24 for Italian films, 16 for French and 8 for British *(see Table 7)*.

Finally, we learn that the German experience offers a fairly clear illustration of how difficult it is to find the right solution to that ineluctable equation for what is both an art form and an industry: "creation + production (financing) x distribution = audience". And consequently some people are moved to ask the question:

- Can aid end up by proving disastrous? — Or, put differently; can its perverse effects ultimately wipe out its beneficial effects?

- Or, quite simply; can there be too much aid?, that is, once it is established and increases in volume[1], can aid end up by becoming a non-contingency instrument?

Another, related question should be added: is the production finance provided by television, albeit through the cinema aid fund, a good or a bad thing? In other words, do its disadvantages outweigh its benefits?

This sort of problem is quite rightly at the centre of a public debate in the Federal Republic of Germany with, for example, the set of twenty-one questions tabled by parliamentarians on 30 June 1981 for government answer dealing with "Federal, cultural and economic aid to the film industry". Scarcely anyone disputes the fact that the 1968 aid act breathed new life into the German film industry. And, in this context, we must take care when interpreting the statistics showing that before aid was given German films held a greater share of the market than they do now: was not the figure of 32% of the market pre-1968 achieved primarily because of the then vogue for "X" films (sex and "sex education" films) which proved as short-lived as earlier vogues (for example the sentimentally bucolic *"Heimat-Filme"*)? There was therefore a need to encourage creativity and to promote the development of fresh talent by the establishment of adequate structures. This was done and subsequently reinforced as is shown by the increasingly important place given to "selection" in the aid system as a whole. With aid steering an ever-difficult course between the Scylla of creation for creation's sake while ignoring the audience and the Charybdis of excessive "commercialism", and between two methods (selective and automatic), it is not surprising that the "German system" has not altogether avoided the pitfall of film production for the greater delectation of committees[2] rather than for the enjoyment of a "wide general audience".

This pitfall is undoubtedly attributable in part to playing the card of massive intervention by German television in film financing, a move sometimes held up as an example abroad. "The adversaries of the 1960s became partners in the 1970s and 1980s . . .": the television point of view expressed here mirrors a reality, but one which has been much challenged, as was evident in July 1979 when the new film industry aid act was voted and the discussions in progress prevented the signing of the second television-cinema agreement[3]. To those who question the justification for this policy of co-operation, television can quite rightly reply that in making grants of between 400 000 and 1 000 000 DM per film (i.e. between 15 and 30% of

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1. In the early years of aid, the "levy" amounted at first to 3% (1968 and 1969), then slightly over 2% of box-office receipts, while it now amounts to 3.5% (1980). But the British "levy" (at 5.5% of receipts) and above all the French "levy" (at 12% of receipts) are very much higher.

2. The *Gremienfilm* is one of the negative aspects of the German aid system condemned by the German producer and director G. Ehmck. He notes that the eighty members of the New German Film-makers' Action Committee, to which he belongs, account for at least 75% of film production but hold a derisory 6% of the national market, and therefore believes that the system must be reformed (see *Film Echo* dated 20 May 1981).

3. The second agreement with the FFA *(Film Förderung Anstalt)* practically doubling television's contribution to the Aid Fund (79 m. DM compared with the 43 m. under the first agreement) was only signed on 26 June 1980. But television provides funds for film-making in other ways: the second channel (ZDF), for example, has a film budget for 1981 of 200 m. DM for 80 firms in the private sector.

the cost) it has enabled a goodly number of projects to find a producer and thus to be implemented. But the representatives of the television channels also admit that a programme director who takes the risk of financing a film of which he knows little except the script bases his decision "on criteria of artistic quality which is not the same as the concern for commercial success characteristic of the film distributor and cinema operator".

A situation of this kind shows quite clearly that any card can be countered and that in this situation a dilemma[1] is inevitable:

- if financing by TV will not — or cannot — be forsaken, television's criteria of choice must be accepted and the risk run of a possibly mediocre adaptation of the product to the possibilities and demands of the film theatre and the big screen;

- if the prime aim is to produce films making the fullest use of the resources open to films designed for exhibition in film theatres and meeting their audiences half way, we must be determined — and able — to forsake financing by television.

This amounts to saying that we ought ideally to decide on the policy for cinema/television relations (and, more generally, cinema/new media relations) we would like to see adopted and, once it is adopted, we ought to stick to it. But since such a course, which in itself is always difficult, is the equivalent in an "industry of emotion" of squaring the circle, it is not surprising that in practice the situation is like a pendulum swinging between varying poles and factors: automatic — and then selective — aid, aid to "creation" — and then to distribution, direct television intervention in financing — and then maintenance of the separate identity of the media, etc. But we can well appreciate the latent trend among the professionals is towards wanting the best of both worlds, that is enjoying the benefits while avoiding the drawbacks and, likewise, keeping profits for themselves while sharing out losses.[2]

The German film industry in 1981 seems to have reached this kind of pendulum situation. Since aid to creation and production with the help of television has undoubtedly led to the discovery of previously unknown but highly talented film-makers, without, however, in the thirteen years it has been operational, managing to win a lasting audience for them among cinema-goers, we still have to ask whether the system needs to be reoriented. Three years ago in Lisbon,[3] it was suggested that German television might well become a launching pad for a "new generation" of German film-makers who would ultimately win the support of audiences who paid for seats in cinemas. The success of this idea was conditional on the cinemas in question being able to "hold out" during the trial period (which had to spread over a shorter rather than a longer period) and not having to close down for lack of customers or resort to showing virtually nothing except foreign — principally American — films. This condition was not — or was only very inadequately — met[4] and it is therefore no surprise that the time came for heart-searching and evaluation. For example: does the accumulation of the various forms of financial aid (federal, regional, television) not degenerate into "over-financing", thereby wrapping the director-producer in a risk-free cocoon and isolating him from the market and its demands? Has aid to distribution, particuflarly to cinemas which require fairly heavy investment if they are to be modernised, not been badly thought out in terms of both volume[5] and methods of allocation?

In fact, all this bears out what A. Filson said in his report on distribution in Europe: the weakness of German distribution, clearly shown in the fact that the three German films with the biggest box-office success of late, both in Germany and abroad, were all distributed by American firms. It can at any rate be said that while the German and British film industries have in common a low volume of production and low or non-existent aid to cinemas, their outstanding, shared characteristic is the weakness of their distribution systems vis-à-vis the overbearing "presence" of Hollywood subsidiaries on each of their markets. And yet can nationally-produced films, even with substantial aid, gain a lasting hold if they do not have the support of a solid network of national distributors? There can scarcely be any doubt as to the answer, and this is why parliamentarians in Bonn have frequently questioned the government[6] on the distribution situation in Germany, the role of the "Majors" and Federal Cartel Office (BKA)'s control over the terms of competition. This has apparently resulted, in the Federal Republic of Germany, in a trend towards strengthening aid to dissemination *(Abspiel + Absatz)*, that is to distribution as well as to cinemas themselves. But it is clear that the interdependence of the industry's various branches tends to transform each problem into a vicious circle: the poor performance by German films on their own market places the distributor of German films in a precarious situation and, because he is in a position of weakness, he hardly has the resources to support the German film industry. It is therefore not surprising that there is some hesitancy over the remedies to be applied, for example the FFA,[7] while proposing to give aid to distribution, adds that such aid will achieve little as long as the films presented by German producers do not

1. The Interprofessional Committee in London (see above) is highly critical of the German example: "Financing by TV, with its uncertainty as to its audience and its mixed artistic objectives, has brought about the total collapse of the German film industry."

2. Lisbon Symposium (June 1978) — *Closing remarks* by N. Garnham, Doc. 4306. J. C. Batz also points out that "state budgets were hardly designed to be dispersed in the form of private profits".

3. Report by C. Degand — Doc. 4306 — Lisbon Symposium, June 1978.

4. Some of the films which had received aid from various sources, including television, were commercial successes, for example *Die Ehe der Maria Braun* and *Die Trommel*. But, taken as a whole, aid "to projects" was only very rarely repaid owing to lack of success with the public *(see Table 2)*.

5. The aid earmarked for the 3000 German cinemas amounts on average to 1000 DM per cinema, whereas the production may qualify for 1 m. DM in aid per film.

6. Questions tabled by Mrs Martiny (SPD) on 8 December 1977 (answered by State Secretary Gruner) and in 1981 (answered on 13 April 1981 by State Secretary D. von Würzen).

7. See interview with Mr von Andrenyi, member of the Administrative Council of the FFA and Chairman of the aid awards committee, in *Film Echo* of 29 November 1980.

manage, from box-office receipts, at the very least to cover the costs incurred by the distributor,[1] some sectors of the industry[2] — experimental and art cinemas, for example — criticise the "new generation" of German film-makers for concentrating on collecting aid while showing no concern about the dissemination of their films, and then go on to suggest that aid to producers be supplemented by a special subsidy towards the launching of their films (cost of copies, advertising, etc) would be better than introducing an excessively complex system of aid to the distributor.

Production and profitability

But the need to strengthen such and such a branch of the film industry should not deflect us from examining a more general problem — the profitability or, more precisely, the conditions for optimum profitability throughout the film chain and starting with production. Of course, the problem is not new, nor is it peculiar to any one country; but has it not been somewhat neglected in Europe, perhaps partly as a result of aid?[3]

The profitability of production depends on volume and cost. A comparison of the four major Western European countries *(see Table 6)* reveals a group of high-production countries (Italy and France) and a group of low-production countries (Federal Republic of Germany and the United Kingdom): might there be, relatively speaking, surplus volume on one side and insufficient volume on the other? Be that as it may, it is worth noting the paradox that the USA, lord and master of its domestic market and almost in the same position in the world market, produces markedly fewer films[4] than Western Europe which is not mistress in its own house and is in a distinctly subordinate position in the international market. This in turn leads us to question seriously the validity of the theory that *quality* (in films) is a product of *quantity* (of films made). The truth no doubt lies somewhere between two extremes, namely if too few films are made, the chances of promoting talent and innovation are reduced, and if production is unrestrained, there is a danger of the available forces being scattered and of looking for the easy way out, as it is a fact that there is not a bottomless pit of human resources — particularly resources of quality — and that financial resources have always been limited and are more likely to shrink than expand during the crisis currently affecting Western economies.

We then have to consider not only the question of the *volume* of production but also the question of its *cost*, and this is what is being done in the Federal Republic of Germany where the aid institute (FFA) is beginning to be worried by recent, sharp rises in film-production costs that cannot be attributed solely to rises in the cost of living. Germany is not, of course, alone in experiencing rises in the cost of films: America, for example, has been affected too[5] and this has had repercussions on the situation in Europe as a result of the local impact of the world-wide circulation of films made in Hollywood. How far, then, is it possible to control costs? Can deficits be avoided? A negative answer has been given to this question by the rare researchers who have looked into the "economic dilemma" that is overwhelming certain cultural sectors such as the theatre, opera, music and dancing.[6] The conclusion reached by that research — the so-called "Baumol's law" — is essentially that any cultural activity is doomed to dependence on patronage because it is doomed to run at a loss simply for the following reasons:

— firstly, the cultural sector, unlike the "secondary" sector (i.e. industry), cannot improve productivity;

— secondly, there is a natural domino effect which means paying comparable salaries in the cultural sector to those made possible elsewhere by higher productivity;

— conclusion: insolvency and hence the need to subsidise demand in order to maintain access to culture.

More recently the case of the Paris Opera was studied by two French university lecturers.[7] After mentioning the work of Baumol and Bowen, they drew attention first of all to the fact that, as regards the cultural field, the meaning of the concept of higher productivity was unclear. For the opera, for example, views differed as to the benefits to be derived from widening the appeal of this art form by using the audio-visual media. The authors also raised the question of production costs and the (numerous) explanations for their rise. After pointing the finger in particular at "contemporary dictatorship of the directors" — which largely offset the few productivity gains that might be possible in the system — the two researchers ended up by suggesting that there might be another law — the law of "generalised inflation", that is since the performers' market is a narrow but world-wide market, fees tend to fall into line with the highest prices.

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1. The Americans are devoting ever-increasing sums of money to launching their films — in some cases they are close to the "negative copy" cost of the films in question.
2. Cf. W. Grassmann at the seminar organised by the "A. G. Kino" Association: he urged the need for a survey of the exact state of the distribution sector.
3. One of the standard criticisms made by economists of aid and grant systems is that they tend to shield the receiving sector from economic realities whereas P. Uri argues that aid is acceptable only as a means of helping the sector in question to do without aid. The "perverse" effects of aid may, of course, be felt in branches other than the production of films. For example, some observers attribute the excessive film theatre capacity in some towns and districts in France to the aid given to the exhibition branch. But it is also true that surplus capacity may exist in the absence or near-absence of aid, as in the Federal Republic of Germany where some towns are threatened with surplus capacity in *Programmkinos* (cinemas with programmes focusing on a particular theme, author, etc.).
4. In 1979 American production amounted to 138 films by MPAA firms and to a total of 215 if films made by other companies are included (and including 26 films made earlier but put on to the market in 1979). In the same year, the four "major" European countries produced approximately 300 "different" films, allowing for co-productions; if the three "smaller" countries are included, the total rises by about 30.
5. In the United States average cost (according to MPAA estimates) rose from £ 2 million in 1972 to £ 4 million in 1976 and £ 8.5 million in 1979. The companies are worried by this rise: in 1981 they estimate launching costs at £ 10 million and reckon that in 1985 production and launching will cost £ 14 million and £ 11 million respectively, that is a total of £ 25 million per film.
6. W. J. Baumol and W. G. Bowen, *Performing Arts — the Economic Dilemma*, New York, 1976.
7. „Existe-t-il une économie de la production lyrique?", by X. Greffe and X. Dupuis in *Le Monde*, 13 July 1980.

To what extent can these ideas be transposed to the cinema? Let it be said at the outset that, despite their special nature, the culture industries cannot be considered in isolation from the rest of the economy. We then discover that the arguments put forward by the American and French researchers are not dissimilar to the ideas voiced by A. Sauvy in Paris on the occasion of the publication of his recent work entitled *La Machine et le Chômage*.[1] In his study of the present crisis and of the problems of inflation and employment, Sauvy criticises the so-called "tertiary" or service sector, in which, incidentally, he includes the commercial aspects of entertainment and cultural activities. Contrary to many accepted views, Sauvy has always held that technological progress creates jobs: by an overflow effect (which he terms the "umbrella system" — "*système de parapluie*") the additional revenue generated by technological progress in one sector opens up new markets, and hence creates new jobs, in other sectors. The only problem is that the "umbrella system" works properly only within the secondary (i.e. industrial) sector where output is rising. If, on the other hand, as is the case at the moment, that additional revenue flows over into the tertiary sector, the system no longer works as efficiently for two reasons:

a. in the tertiary sector, production costs are hardly reduced at all by rising demand and hence there are virtually no gains in productivity;

b. salaries in the tertiary sector are too high. This is the legacy of a tradition in which a clerk, being a member of a rare and educated species, had to be paid more than a manual worker; unfortunately, the net result is that with the same amount of money, fewer people tend to be employed.

Can the film industry therefore simply hide behind "Baumol's law", the "generalised inflation" law or the "Sauvy effect" to justify its recourse to state aid and intervention? In other words, should it disregard all concern for profitability and any enduring attempt to adapt the conditions of production to market conditions and supply to demand? In fact, even if it wanted to, it wouldn't be able to, since it has to be understood that European film industries face competition from Hollywood — or, more accurately, operate virtually in the shadow or the wake of the omnipresent American system. And "Hollywood always abides by the laws governing the production, marketing and consumption of industrial products" — to which should be added Mario Gallo's comment:[2] "It is a known fact that the law of supply and demand means that the customer's wishes have to be met and, at the same time, that new desires have to be created so that they too can be met". This is why a "European system" of production taking too little notice of the persuader/persuaded relationship that must be established between the film producer and his audience would be in grave danger of fostering a situation in which the majority of European cinemagoers would use their purchasing power to support "wide-audience" films, that means essentially American films and essentially those with fat production and launching budgets, whereas films of European origin would be left with small audiences and slim receipts: on the one hand mass cinema admissions and films paid for by the market, and on the other a small audience of *cognoscenti* for films living above all on assistance. Would such a situation be acceptable? Quite obviously it would not, from either a cultural or an economic point of view. The film industry is less able than any other cultural sector to escape from the fact that "whether you like it or not, a *rapprochement* and a coupling have occurred between industry and culture . . ." or to ignore the rise of mass culture that characterises the world in which we live. Furthermore, where aid is funded from box-office receipts, it is dependent on successful films.[3] It is thus through the commercial success of some that it is possible to help the others, that is to encourage experimental films and films that break new ground — the very ones that present the greatest commercial risk, as is shown by the low percentage of repayments of selective aid in the Federal Republic of Germany and in France.

1. Dunod, 1980, p. 336.
2. "Culture et industrie dans les rapports cinéma-télévision" in *Film Echange*, No. 9, Paris, winter 1980.
3. It might be argued that aid derived from a levy on box-office receipts has the advantage of "making the Americans pay" since they pay their dues and — in theory at least — are not entitled to receive aid to production. It might be added that the lower the national film's share of the market, the greater the aid burden borne by foreign (particularly American) films: at present, levies on American films account for about 65 million out of the 135 million ECU paid out in aid by the four major European countries (i.e. approximately 50%). But such a system has obvious limitations.

Aid and its limitations

So it is that each country experiences problems which the remedies tried over several decades, based essentially on aid and co-production, do not always succeed in eliminating. For its part, the Common Market in the film industry is in the throes of a conflict which is legal in form but is ultimately concerned with finding a way of enabling the film as an art form to flourish and the film industry itself to expand. The first response that comes to mind must be the one given in *Le Monde Diplomatique* in November 1977 in its article on the German cinema: "The genius of German film-makers, considerable though it is, may well not be enough to save German film-making from the grave crisis it is going through, unless a more intelligent aid act manages to provide support for both the art form and the industry . . .". This is a fair summary of the problem in that it refers to the need to support the art form and the industry alike. But does a "more intelligent aid act" exist and is the present German act not already very "intelligent"? Furthermore, is recourse to aid sufficient?

We may say straight away that the reflex of looking upwards and lobbying the *government* rather than looking downwards towards the *market* and its demands is worrying. This, at any rate, is the view of D. Pichert[1] in his 1976 study entitled, significantly, "Film production to meet market demands: a hopeless aim or a missed opportunity?". Pichert, who was struck by the poor performance of the national film output, analysed the economic structures of the German film industry and the conditions for profitable film production.[2] He deplored, *inter alia*, the fact that German film output was ill-equipped to meet the demands of the market and pointed to the paradox of a sector which combined the use of the latest developments in transmission technology with the survival of the most archaic forms of *organisation*. In other words, an aid system alone was not enough. In France, H. Lassa echoes this view[3] when he says that in addition to providing subsidies, the state must "create and maintain conditions in which creativity is possible and in which it can express itself and find an audience". The Italian view, given by M. Gallo, is that, while the "independent" and "craft" branches of the film industry often lack the wherewithal to be enterprising, "aid alone cannot build an alternative to the traditional system of film-making". This might lead us to look at the question of production undertakings: between the dangers of ossification resulting from excessive industrial and commercial concentration and the risk of impotence for the pure "craft" industry, might there not be room for a "new-style audio-visual undertaking"? J. C. Batz had called on the participants at the Lisbon Symposium to investigate precisely that, since it was his concern "to transcend the traditional private undertaking and its mercantile world and to transcend the public undertaking and its bureaucratic world".

This being so, why not draw up fresh guidelines for aid policies geared to European co-operation? The Council of Europe supported this idea in its Recommendation 862 of 11 May 1979, as did Mr J. M. Dehousse, the Belgian Minister for French Culture, when he said[4] that "the absence of any coherent policy at European level aggravates the problems caused by linguistic and national differences". He went on to urge the creation of a "European framework for action" based on co-ordination of the various aid systems and the setting up of "European distribution networks" and, incidentally, to deplore the fact that "the political will (to make progress in this field) is still largely wanting". This is similar to the view prevailing at the European Commission where, as we have seen (see p. 17), Viscount Davignon declared in favour not of abolishing but of reforming aid "so as to make it an effective instrument to serve the needs of the European cinema".

Aid and co-production: a new approach

But has this process not already been begun? We might think so when we recall that, on 5 February 1981, France and the Federal Republic of Germany signed an agreement supplementing and extending their earlier co-production agreement by the establishment of an additional, joint selective aid system.[5] The declared purpose is "to help strengthen the competitive capacity of European film industries", and the agreement also states that "the two states will review the terms of the agreement as soon as one or more EEC member states indicate their desire to participate in this joint system of aid to projects". It is true that the terms of this new agreement — like the terms of previous co-production agreements — have not been whole-heartedly welcomed in Brussels in that they do not allow the directors who are to make the films in question to be freely selected from within the EEC. But, since provision has been made for other EEC countries to become parties to the agreement, all that is needed to overcome the European Commission's objections is for the other eight states to ask to participate. Likewise thought has been given in Paris[6] to improving on this first step by stimulating co-productions by means of financial incentives to their distribution. Those incentives would essentially take the form of aid at a rate fixed in advance by the countries concerned to be paid to distributors in the countries showing the

1. In *Film und Recht*, Munich, 15 June 1976.
2. He noted in passing: "If, as we are unceasingly told, it is the creative and irrational components which are decisive in determining the value of a film, then the shortage of material resources should not hinder the production of films that are not only of high quality but also commercial successes."
3. See his report for the Colloquy "Creative art and cinematographic production vis-à-vis the State in Europe", Strasbourg, 1981, Doc. CC-Coll-CIN 7.
4. In his preface to a study by C. Degand — *Le Cinéma dans le Marché Commun*, May 1978.
5. For a maximum of six films per annum, the number of majority co-productions for each country being equal; the total budget amounts to 3.5 million FF (0.75 million DM + 1.75 million FF) and each film project is to receive between 100 000 and 200 000 DM on the German side and between 230 000 and 460 000 FF on the French side.
6. Report of the working party on *Le cinéma et les nouvelles techniques de l'audiovisuel* (The film industry and the new audio-visual technology), Paris, October 1980.

films in question and conditional on its being reinvested in co-productions with other European countries. The aid fund would also make special provision for financing projects "of European interest" (e.g. aid to the writing of scripts, aid to dissemination). Lastly, "in addition to these essential proposals for developing creation, a gradual move ought to be made at European level to bring about a *rapprochement* between the distribution and exhibition sectors so as to palliate weaknesses vis-à-vis their American competitors".

Nationality criteria: a poorly-framed question

Is it possible that such moves towards a policy of European co-operation might still come to grief over the question of nationality criteria for the films? It would clearly be a pity if this were to happen. Except that if we think about it, the concept is, to say the least, relative in that, in common with the word "creation", it may be regarded as being more than a little ambiguous. Indeed, it would be easy to ask a whole series of questions: for the man in the street, is not a film's nationality primarily the nationality of the author of the story, and/or of the director or even of the main actors? Whereas for others, might it not be the nationality of the financial backer and/or of the producer and of the country in which he lives and works? As far as national administrations and aid laws are concerned, the nationality of a film is bound up with the nationality of the director, producer and, in some cases, the place where the film was made and copies produced. But the Brussels authorities are only too happy to point out that nationality criteria are manifestly more elastic in practice than in theory: France, for example, accorded national status to a film made by a foreigner,[1] who was not even an EEC national and did not speak French: and the Federal Republic of Germany has, on several occasions, given aid to films directed by an American[2] and in which some of the actors were also American. The "reverse" may also happen: Italy refused national status to a film whose director[3] was clearly Italian by birth and culture but had been naturalised as a citizen of another country, itself a member of the EEC. Year after year the British have given a British baptismal certificate to films financed, produced and distributed by subsidiaries of the American "Majors".[4] Lastly, what explanation can be offered for a film which is clearly English in spirit and whose author and director are both English[5] and which, moreover, was a United Kingdom entry for the Cannes Festival, being classified in Paris as "100% French" when one of the two co-producing companies is British? Small wonder that the European Commission is surprised at the hesitancy so far shown by the major countries (but not the United Kingdom) as regards relaxation of the relevant nationality criteria.[6]

Free movement and creativity

However astonishing we may find it, we have, in fact, to accept that many people in the European film industry shy away from the ideas of opening up frontiers and of freedom. And yet the freedom in question would enable the straitjacket currently imposed by bilateralism to be cast aside and give each potential film-maker the right — but not oblige him — to hire the service of collaborators chosen for their abilities and qualities rather than their nationality.[7] And this kind of talent promotion, which is so important for the maintenance, development and dissemination of European creation, could not but be enhanced by the creation of a framework enabling all the available forces in Europe to compete; such a framework should, of course, protect workers' rights regardless of frontiers, as Mrs M. M. Krust recommends in her report (see pp. 17-18), and this would entail, *inter alia*, the elaboration of outline collective agreements at European level. In the meantime it has to be recorded that when those creative forces find that the national framework is too small for them, they all too readily emigrate to Hollywood and thereby turn the European audio-visual industry into yet another victim of the "brain drain".

What objective can there be other than, as J. Rigaud[8] said recently, "to keep in Europe what creativity remains ...". But how can this be achieved without suitable structures? And how could those structures be built if Europe goes on refusing to accept that cultural success cannot be achieved without industrial success and that the latter presupposes a minimum of structures and organisations? Reference to American competition will remain an empty phrase or an alibi for as long as we fail to learn from the fact that Hollywood's efficiency[9] is based *not only* on a sustained policy of satisfying the tastes of the public (the more so as that policy in no small measure made those tastes what they are) and on producing films not one by one but in batches of ten to twelve — in the full expectation that only one or two will be successful and make the batch as a whole profitable, *but also* on concentrating the three powers of financing, producing and distributing films under one roof. Even without such awareness, European directors and producers have, of course, had their successes but they have not made a lasting cultural impact or, indeed, achieved commercial viability. M. Hassan (see p. 20) said sadly of British films that each new title had to fight for public attention, whereas American films slipped easily into well-prepared tracks, and P. A. Touchard (see note 3 p. 18) noted that the public tends to pay attention only to those

1. J. Losey, for the film *Monsieur Klein*, an instance all the more surprising for Brussels in that the film was a French entry for the Cannes Festival, an international competition.
2. Sam Pechinpah.
3. Vittorio De Sica, who had French nationality.
4. This happened ... Italy for years: at the height of the American "run away production", Rome was nicknamed "Hollywood-on-Tiber".
5. *Quartet* by James Ivory.
6. Especially as commercial and other pressures can be relied upon to continue to act as a brake on freedom of movement and choice once these freedoms have been enshrined in the texts.
7. Are artistic qualities and, ultimately, talent a question of nationality? Certainly not, says Brussels, which quotes the example of France's entrusting the destiny of the Paris Opera to an Austrian; and does not the same spirit underlie the comment by J. Lang (French Minister for Culture) that "... cultural cross-breeding and immigration enrich and revive a nation's values and potential ..."?
8. Interview with the administrator of RTL in *Le Film Français* of 3 July 1981, in which J. Rigaud adds that the creativity in question extends, above and beyond creation, namely books and the press.
9. See *The US Film Industry — 1969-79* by C. Degand, Council of Europe, Strasbourg, December 1979.

works for which it has some yardstick by which to measure them. Herein lies, perhaps, one explanation of the present position of the German cinema: there is no shortage of talent but there is, seemingly, a total absence of unity of theme or style which condemns it, too, to fight a difficult battle — difficult because it has to be begun anew each time — to win an audience which has no yardstick, by which to judge it. To sum up by pushing the paradox a little far, we might almost say that the German aid act has become so "intelligent" that it has overshot its target and that it is in the surfeit of talent among German film-makers that we should look for the Achilles' heel of the German cinema.

Cinema and the new media

At the risk of stating the obvious, we must not omit to point out that the cinema is now caught in the tide which is sweeping the whole audio-visual sector towards what some regard as a land of promise. And, while "it is impossible to say exactly where we are with the technological revolution" (the words are those of Mr Eisner, President of Paramount Pictures Corporation), note must be taken of what he added immediately afterwards: "One thing is certain: that revolution is totally dependent on the product, a product that is American and comes essentially from Hollywood . . .". What now seems to be accepted, whether we are talking of "micro" or "macro" communication of "broadcasting" or "narrow-casting", is that the demand for software, for programmes, and hence for creativity is going to increase.[1] But who is best placed to take advantage of this? Almost certainly America which is hot favourite to rule the waves for two reasons:

a. the USA has the most advanced telecommunications technology;

b. the audiovisual industry operates there in a "deregulation" situation and this enables a wide variety of programmes to be created and disseminated. New and rich markets[2] are therefore in the offing for American creators, producers and distributors, who will then be in a strong position to attack the international market for programmes. For this reason it is in no way a golden age of film and audio-visual creation that is waiting round the corner for Europe, to whom T. Guback[3] issues the following warning: "If they (Europeans) think that (meaning that a golden age awaits them), then they have learned nothing from the past or are mistaken in their interpretation of current trends".

This is obviously why mastery of the technological revolution in question will require Europe to accomplish another revolution: in mentalities. This latter revolution will mean accepting that, as regards culture industries and "art industry", creativity cannot develop to the full unless the foundations are solid, and those foundations mean enabling creativity to be financed and then disseminated both in Europe and outside, both via the new media and via the traditional cinemas. Such structures can only be the result of a relentless will to organise which, to be effective, must be deployed on a European scale. To sum up:

- Copy Hollywood as regards *content*, that is message and style: certainly not;

- Copy in a European fashion the workings of the *container* — that is the structures — that make the "American system" efficient: why not?

1. See "Der Film aus Weltweiter Sicht — Gegenwart und Zukunft", C. Degand, in: *Film und Recht*, Munich, 15 January 1981.

2. Cable-television with the advertising revenue it procures, existed in 3 million homes in 1979; at the present time it is in 19 million and is approaching 30% coverage (over 73 million homes in the USA). In some towns, cable-TV offers a choice of 37 programmes, some of which are of high quality (new films, with no advertising spots, twenty-four hours a day).

3. "Hollywood expands into the new markets for TV, pay-TV and home-video" by T. Guback, in *Media Perspektiven*, 1981/3, Frankfurt-on-Main.

APPENDIX

Table 1

Aid to the cinema — Source of funds

The four types of aid (sources of funds) listed in paragraph 1.2 exist as follows in the various countries:

France	Type **a**:	Ministry of Culture aid to film creation
	Type **b**:	reduction of VAT from 17.6 % to 7 %
	Type **c** + **d**:	bank loans with "support" (= aid) as surety
	Type **d**:	the essence of the "Support (= Aid) Act": the sharing out of a proportion of cinema box-office receipts (calculated before the deduction of VAT, which is not payable on the levy) in accordance with legislation and regulations and outside the normal contractual framework.
United Kingdom	Type **a**:	"Cinema" head of the Arts Council grants budget
	Type **c**:	NFFC loans for film production
	Type **d**:	the main source of aid (*levy*), as in France, but VAT is payable on the levy.
Federal Republic of Germany	Type **a**:	prizes awarded by the Federal Ministry of the Interior + *Kuratorium* for young directors + grants by the *Länder*
	Type **b**:	special reduced tax on "approved" (PBW) films + tax-shelter system + VAT at half the normal rate on box-office receipts
	Type **c**:	special facilities offered by the city of Berlin
	Type **d**:	FFG system as a whole (as in France).
Italy	Type **a**	the main source of aid in Italy
	Type **b**:	refund of the entertainment tax
	Type **c**:	BDL/SACC loans
Benelux	State grant (Type "a"); in the Netherlands this is combined with a contribution from the profession (via the employers' organisation, NBB).	
Sweden	Type **d**	
Austria	Under 1981 Act: Type **a**.	

NB. The present French aid act (the third since 1948) uses the term *soutien* (= support) which is close to the German *Förderung*, whereas *aide* (aid grant) corresponds to *Hilfe* or *Beihilfe*.

Table 2

Aid to film production — Federal Republic of Germany/France

Federal Republic of Germany	France
A. *Selective aid 1974-81* ● Number of films given aid: 140 ● Average per year : 20 ● Total advances : 42.8 m. DM ● Average per film : 0.305 m. DM[1] ● Repayment in respect of : 3 films[2] Selective aid = 55 % of total.	A. *Selective aid 1960-80* ● Number of films given aid : 748 ● Average per year : 37 ● Total advances : 280 m. F approx. ● Average per film = 0,375 m. F approx. ● Repayment in respect of = 79 films[3] ● *In 1980* Total advances = 25.17 m. F to 35 films, average 0.74 m. F per film; 16.6 % of total = 151.3 (see below).
B. *Total aid* 1. *1968-75* (before "aid to particular projects") ● Total aid = 74.31 m. DM ● Total number of films = 255 ● Average aid per film = 0.291 m. DM 2. *1979-80 (Federal + Länder)* ● Total aid = 76 m. DM ● Total number of films = 80 ● Average aid per film = 0.95 m. DM	B. *Total aid* 1. *1971-72* ● Total aid = 65 m. F (approx.) ● Total number of films = 145 mio F ● Average aid per film = 0,45 m. F 2. *1980* ● Total aid = 151.3 m. F ● Total number of films = 180 ● Average aid per film = 0.8 m. F
Remarks Between periods 1 and 2, average aid per film increased by a factor of approx. 3 (in nominal DM)	*Remarks* Between periods 1 and 2, average aid per film increased by a factor of approx. 2 (in nominal F)

1. Partial or full repayment 2. Maximum laid down by FFG Act = 0.7 m. DM. 3. 1 repayment in full

N.B. Average aid per film in 1980 in the Federal Republic of Germany is almost three times higher than in France. The volume of production receiving aid in France is approx. two and a half times greater than in the Federal Republic of Germany.

Table 3

Europe and the cinema — Aid to production

Totals and amounts per film in millions of units of local currency (LC) and in ECU

	Total aid		Aid to production		Number of films (5)	Average aid per film in ECU (6)
	LC (1)	ECU (2)	LC (3)	ECU (4)		
Federal Republic of Germany (1979)	83	32	76	30	80	0.38 (= 0.95 m. DM)
	→ all forms of aid = Federal and *Land*, "automatic" and "selective"					
France (1980)	343	58	151	25	180	0.14 (= 0.8 m. FF)
			→ incl. 25.8 m. advance on box-office receipts			
United Kingdom (1979)	7.4	13.5	6.0	11	50	0.22 (= £ 0.12 m.)
			→ incl. 0.2 = script fund (11 firms receive such aid, i.e. £ 0.5 m. or 1 m. ECU each)			
Italy (1978)	50 000(e)	32	28 000	23	140	0.163 (= 200 m. Lire)
			→ 13 % of 149 000 m. lire (box-office receipts on Italian films) + loans at preferential rates of interest + premiums for quality			
	Total four countries: →			89	450	0.198
Belgium (1978)	229	5.5	223	5.35	12(e)	0.44 (= 18.5 m. FB)
	→ 2 "cultural" aids + aid from Ministry of Economic Affairs					
Netherlands (1981)	10	3.6	7(e)	2.50	10(e)	0.25 (= 0.7 m. Hfl)
Austria (1981)	30	1.7	30	1.7		
	→ excl. television contribution					

Average aid per film: theoretical annual figure providing a basis for comparison

N.B. (e) = estimate
1 ECU = (approx) 2.52 DM/6 FF/£0.54/1.240 lire/42 FB/2.81 Hfl/17.8 ÖSch.

Table 4

Federal Republic of Germany: cinema trade balance

Year: 1976 Units: millions DM

	Total	North America	Europe	Others
Import	88	46	38	4
Export	12	4	5	3
Balance	— 76	— 42	— 33	— 1

Source: Survey by E. Moths, Bonn, September 1978

Table 5

Share of national market held by films of national origin and by films from the USA in Italy, France and the Federal Republic of Germany

	1976	1977	1978	1979	1980
Italy Italian films (American films)	57 % (30.4 %)	52,4 % (32.7 %)	43,1 % (40 %)	37,5 % (39.4 %)	— of Italian — market
France French films (American films)	52.5 % (28 %)	46.5 % (30.5 %)	46 % (32.6 %)	51 % 30 %	47.7 % (36.3 %) of French market
Federal Republic of Germany German films (American films)	11 % (43 %)	11.4 % (37.7 %)	12.8 % (54.9 %)	16 % (39.5 %)	9.3 % (54.9 %) of German market

Average: 12.4 % German films

Average 1960-67: 32.4 % German films (Max. = 40.7 %) (Min. = 24 %) } before first Aid Act

Average 1968-76: 29 % German films (Max. = 39.3 %) (Min. = 11.4 %) } during second Aid Act

Basis for calculations: Box-office takings ⇄ Italy, France

Distributors' receipts — Federal Republic of Germany

Table 6

Film industries in Europe
Characteristics — possible correlations

Analysis based on the criterion of national films' share of their own market
Two cases — national films badly placed = Federal Republic of Germany and United Kingdom
— national films well placed = France and Italy

	Similarities	*Differences*
Federal Republic of Germany + United Kingdom national films *badly* placed	*Aid:* — fairly small in vol. (United Kingdom 5.5 % of takings) (Federal Republic of Germany 3.5 % of takings) — little or nothing to cinema theatres — average per film: quite high or high *Production:* low volume *American films:* domination (often or always over 50 % of market) *"National" distribution:* Very weak position	*Aid:* essentially automatic in United Kingdom; highly selective in the Federal Repubic of Germany *TV:* Contributes to aid in Federal Republic of Germany but not in United Kingdom *Aid:* (aid to films): compulsory reinvestment in the Federal Republic of Germany but not in United Kingdom
France and Italy national films (relatively) *well* placed	*Aid:* — High volume (F = 12 % of takings) — average per film: relatively low — to cinema theatres: high *Production*: high volume *American films*: relatively contained penetration of the market (under 40 %) *"National" distribution*: Weak position	*Aid:* — parafiscal basis in France; state budget in Italy — compulsory reinvestment in new films in France, but not in Italy *TV:* — contributes to aid fund in France, but not in Italy — quota for national films in France, but not in Italy *Aid to films:* compulsory reinvestment: — Yes in France — No in Italy

Table 7

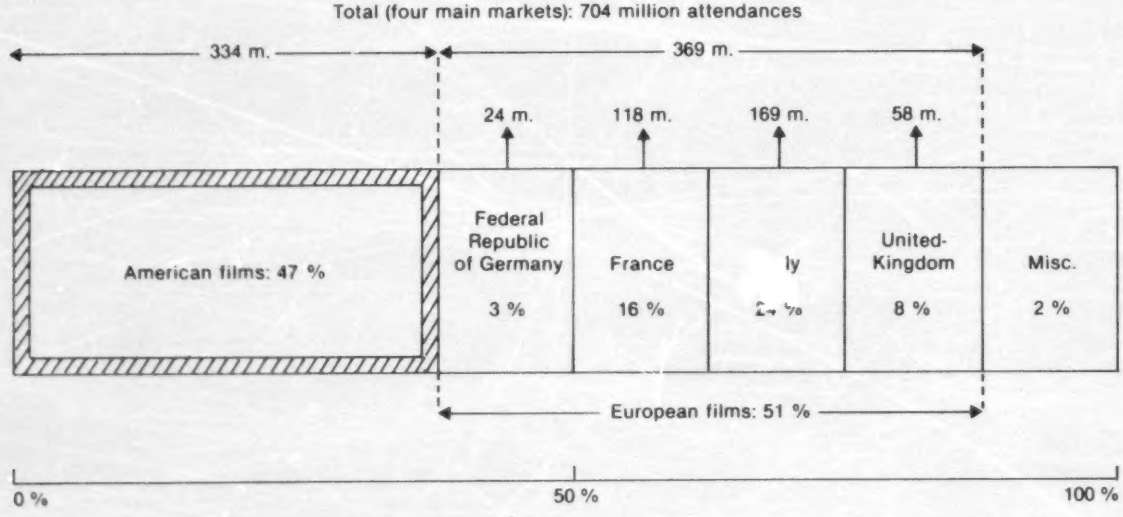
American film industry

1. *Receipts of main american distributors ("Majors"): All markets and all media*

Receipts from films shown in	American market	Outside of USA	Total ($ m.) (millions $)
1976 — cinema theatres	576	571	1147 (64.4 %)
1976 — TV, etc.	485	150	635 (35.6 %)
1976 Total	1061 (59.5 %)	721 (40.5 %)	1782 (100 %)
1979 Total	1067 (54 %)	909 (46 %)	1976 (100 %)

Over a period of three years, receipts from American "domestic" market remained virtually static, whereas export receipts rose by 26 % and their *share* of the general total increased from 40.5 % to 46 % (ie., + 13.6 %).

2. *Share of american films in European cinema theatres*
(Four big markets: France, United Kingdom, Italy, Federal Republic of Germany)
Units: millions of spectators — 1979-80 Estimate



The best-placed European film industry (Italian: 24 %) amounts to only one-half of the American film industry's share of the European market.

Table 8

Europe

1. *Number of new films released in the year stated and their nationality*

(Three main markets + the Netherlands)[1]

	Markets			
	Federal Republic of Germany (1980)	France (1979)	Italy (1979)	Netherlands (1980)
Total films	336	629	532	336
National	49[2] + 2 TV films	236	148	7
Italian	53	42	—	26
French	28	—	81	44
British	13	17	24	20
German	—	22	28	27
Benelux, Denmark	—	4	8	?
Total EEC countries[3]	94	101	141	—
American	109	110	160	141
Miscellaneous	30 + 52 Hong Kong	192	83	—

1. British data not available except for 1977: British films: 42; EEC films: 84; others: 192 (incl. 127 American)
2. Some sources put the figure higher than 49.
3. Meaning films from EEC countries other than the country in question

Europe

2. *Number of new films released in the year stated and their nationality*

	Markets			
	Federal Republic of Germany	France	Italy	Netherlands
Total	100 %	100 %	100 %	—
National	14.58 %	37.88 %	27.40 %	2.08 %
Other EEC films	27.97 %	13.64 %	26.50 %	—
American films	32.44 %	17.65 %	30 %	41.90 %
Miscellaneous	24.40 %	30.82 %	15.60 %	—

List of abbreviations

AIP	Association of Independent Producers
BKA	Bundeskartellamt (Federal Cartel Office, Federal Republic of Germany)
CICCE	Comité des Industries cinématographiques de la Communauté européenne
CNC	Centre national de la Cinématographie (French National Cinema Centre)
FEITC	Fédération Européenne des Industries Techniques du Cinéma (European Federation of the Technical Branches of the Film Industry)
FFA	Film Förderung Anstalt (Aid Fund to the German Cinema)
FIADF	Fédération Internationale des Associations des Distributeurs de Films (International Federation of Associations of Film Distributors)
MPAA	Motion Picture Association of America
MPEA	Motion Picture Exporters of America
NBB	Nederlandse Bioscoophond (Dutch Cinema Association)
NFDF	National Film Development Fund (UK)
NFFC	National Film Finance Corporation (UK)
UIEC	Union Internationale de l'Exploitation cinématographique (International Union of Cinematographic Exhibitors)

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